Supreme Court, U. S.
FILED
JUL 18 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1596

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, ET AL., PETITIONERS

v.

MOW SUN WONG, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED APRIL 24, 1974
CERTIORARI GRANTED JUNE 10, 1974

INDEX

	Page
Relevant Docket Entries	1
Complaint	3
Exhibit A to the Complaint	15
Exhibit B to the Complaint	20
Exhibit C to the Complaint	21
Exhibit D to the Complaint	23
Affidavit of Mow Sun Wong, December 18, 1970	24
Affidavit of Siu Hung Mok, December 18, 1970	25
Affidavit of Anna Yu, December 18, 1970	26
Affidavit of Francene Lum, December 18, 1970	27
Affidavit of Kae Cheong Lui, December 18, 1970	28
Letter on Letterhead of GSA, December 18, 1970	29
Plaintiffs' Amended Motion for Summary Judgment, February 24, 1971	29
Defendants' Notice of Motion, and Motion to Dismiss, April 2, 1971	30
Affidavit of Tom Tung Bor, December 31, 1970	31
Affidavit of Yisung Lei, December 24, 1970	32
Affidavit of Mow Sun Wong, June 4, 1971	33
Affidavit of Siu Hung Mok, June 4, 1971	34
Order of the District Court, filed March 18, 1974	34
Order of the Court of Appeals, filed April 26, 1974	35
Order of the District Court, filed May 21, 1974	35
Affidavit of Robert E. Hampton, April 24, 1974	36
Order of the Supreme Court granting certiorari, June 10, 1974	39

(The Opinion and the Judgment of the Court of Appeals and the Opinion of the District Court are printed in the Appendixes to the Petition for a Writ of Certiorari filed in this case and will not be reprinted in this Appendix.)

553-034 O—74——1

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT

RELEVANT DOCKET ENTRIES

Statistical Record	Costs	Date	Name or receipt No.	Rec.
J.S. 5 mailed, Dec. 22, 1970	Clerk	12-22-7-	———	15.00
				150.0
J.S. 6 mailed, Aug. 31, 1971	Marshal			
Basis of Action:	Docket fee			
Civil Rights (re jobs, U.S. Agencys) inj.—mandamus Declar. relief.	Witness fees			
Action arose at:	Depositions			

Date		Proceedings	Date Order or Judgment Noted
1970			
Dec. 22	1.	Filed complaint and issued summons.	
	2.	Filed Order for service other than US Marshal. (Clerk).	
Dec. 28	3.	Filed Summons on Ret. ex. on 12/22/70.	
1971			
Jan. 26	4.	Filed re-assignment of case to Judge Schnacke	—M—M—M
Jan. 29	5.	Filed pltf. No. of Mo., & Mo. for summary judgt. and memo pts. & auths in sup of Mo.	—M—M—M
Feb. 1	6.	Filed Decl. of ser. by mail.	
Feb. 18	7.	Filed Stip & Ord Ex time to Mar. 12–71 to Ans complaint.	
Feb. 25	8.	Filed Amended No. of Mo. for Summary Judgt. hrg. 3/19 2:30.	
Mar. 18	9.	Filed Stip. & Ord. ext. time thru 3/26 to ans. comp.	RFP
Mar. 19	10.	Filed amended No. of Mo. for Summary Judgt. tp 4/16 2:30.	
Apr. 2	11.	Filed deft. No. of Mo. & Mo. to dismiss w/ memo pts. & auths.	
Apr. 14	12.	Filed pltf. reply brief to deft. memo. in sup. of Mo. to dism.	
Apr. 16	13.	Filed proof of ser deft memo. in sup of mo. to dism ORD: hrg. on Mo. to Dism, & Mo. for summary judgt. cont to 5/3 2:00	RFP
Apr. 23	14.	Filed deft. reply to pltf. opp to Mo. to dism.	
May 3	15.	ORD: Mo. to dism and Mo. for summary judgt. submitted, additional affdts. to be filed	RFP
May 7	15.	Filed Stip. for filing briefs thru 5/14 for pltf and 30 days after for deft.	
May 19	16.	Filed Stip. & Ord. ext time thru 5/28 for pltf. to file briefs and 30 days later for deft to file	RFP
June 7	17.	Filed supplemental Memo of pts and auth. in support of mo. for summ jdgmt.	
July 9	18.	Filed deft. supplemental reply.	
Aug. 19		Ordered assigned to Judge Williams for all further proceedings.	
Aug. 31	19.	Filed Memo. and Ord. granting deft Mo. to dismiss	RFP
Oct. 29	20.	Filed Notice of Appeal.	
	21.	Filed declaration of service of Notice of appeal.	
	22.	Filed Mo. for leave to proceed in forma pauperis.	
	23.	Filed ORD. granting leave to proceed in forma pauperis.	
Nov. 22		Mailed Clerk's No. of appeal to all parties.	
1972			
Jan. 11	24.	Filed designation of record on appeal.	
Jan. 14		Made, Mailed Record on Appeal to 9th CCA.	

In the United States District Court for the Northern District of California

No. 70 2730 RFP

[Filed Dec. 22, 1970, C. C. Evensen, Clerk]

MOW SUN WONG, SIU HUNG MOK, ANNA YU, SISTER FRANCENE LUM, AND KAE CHEONG LUI, INDIVIDUALLY ON THEIR OWN BEHALF AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED, PLAINTIFFS

v.

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION; JAMES E. JOHNSON, L. J. ANDOLSEK, COMMISSIONERS OF THE UNITED STATES CIVIL SERVICE COMMISSION; NICHOLAS J. OGANOVIC, EXECUTIVE DIRECTOR OF THE UNITED STATES CIVIL SERVICE COMMISSION; ASA T. BRILEY, REGIONAL DIRECTOR OF THE UNITED STATES CIVIL SERVICE COMMISSION; ROBERT L. KUNZIG, ADMINISTRATOR OF UNITED STATES GENERAL SERVICES ADMINISTRATION; THOMAS HANNON, REGIONAL ADMINISTRATOR OF GENERAL SERVICES FOR SAN FRANCISCO REGION; ELLIOT RICHARDSON, SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; ROBERT COOP, REGIONAL DIRECTOR, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; WINTON BLOUNT, POSTMASTER GENERAL OF THE UNITED STATES; LIM POON LEE, POSTMASTER OF THE CITY AND COUNTY OF SAN FRANCISCO; AND RUSSEL E. JAMES, REGIONAL DIRECTOR, UNITED STATES POST OFFICE DEPARTMENT, DEFENDANTS

Complaint for Injunctive, Mandamus, and Declaratory Relief (Civil Rights)

I. JURISDICTION

1. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, 28 U.S.C. § 1337, 28 U.S.C. § 1339, 28 U.S.C. § 1343, (1), (4), 28 U.S.C. § 1346, and 28 U.SC § 1361. This action is also brought pursuant to 5 U.S.C. § 702. The amount in controversy in this action, exclusive of interest and costs, ex-

ceeds Ten Thousand Dollars ($10,000.00) for each named plaintiff.

2. Declaratory judgments are authorized by 28 U.S.C. §§ 2201 and 2202.

3. Venue for this action is provided in 28 U.S.C. § 1391(e).

II. PRELIMINARY STATEMENT

1. This is an action for injunctive relief and declaratory relief to prevent the continuing deprivation of plaintiffs' constitutional right to have the opportunity to be employed in a competitive Federal Civil Service position. This action seeks preliminary and permanent injunctions to restrain the defendants from continuing to act upon presently adopted regulations and procedures, under which they deny non-citizens the opportunity to compete for employment in the competitive Federal Civil Service, the federal General Services Administration, the United States Department of Health, Education, and Welfare, the United States Post Office, and all other federal agencies. Such deprivation of non-citizens' constitutional rights in seeking these federal jobs violates the equal protection and due process guarantees of the Due Process Clause of the Fifth Admendment of the Constitution of the United States, plaintiff's statutory rights under 42 U.S.C. § 2000d, and their rights under Executive Order 11,478 (34 Fed. Reg. 12,985, Aug. 8, 1969).

2. This action also seeks a declaratory judgment declaring that the statutes, regulations, and procedures—which deprive non-citizens of their rights to employment in the Federal competitive Civil Service, the General Services Administration [hereinafter referred to as "G.S.A."], the United States Department of Health, Education, and Welfare [hereinafter referred to as "H.E.W."], the United States Post Office, and all other federal agencies—deny plaintiffs and all others similarly situated of their constitutional and statutory rights to apply for such employment.

III. PLAINTIFFS

1. Plaintiff MOW SUN WONG is a Chinese resident of the United States, residing presently in San Francisco, California. He has filed his declaration of intent to become a citizen of the United States; however, he is not yet a citizen. He presently is working as a janitor for G.S.A. under a salary provided by

the California Supplemental Training and Employment Program [hereinafter referred to as "STEP"]. MOW SUN WONG's stipend under this program will terminate on or about February 19, 1971.

2. Plaintiff SIU HUNG MOK is a Chinese resident of the United States, residing presently in San Francisco, California. He has filed his declaration of intent to become a citizen of the United States; however, he is not yet a citizen. SIU HUNG MOK also had been paid by STEP and was being trained as a file clerk for the federal government. SIU HUNG MOK left the STEP program in November, 1970 and is now employed in another capacity.

3. Plaintiffs ANNA YU and SISTER FRANCENE LUM are Chinese residents of San Francisco who are not citizens of the United States. Each has attempted to apply for jobs affected by the United States Civil Service Commission regulations. Their applications have been refused, because they are not citizens of the United States.

4. Plaintiff KAE CHEONG LUI is a Chinese resident of San Francisco, who is not a citizen of the United States. He began working for the United States Post Office, but was shortly thereafter terminated from that employment because he was not a citizen of the United States.

IV. DEFENDANTS

1. Defendants ROBERT E. HAMPTON, as Chairman of the United States Civil Service Commission; JAMES E. JOHNSON and L. J. ANDOLSEK, as Commissioners of the United States Civil Service Commission; NICHOLAS J. OGANOVIC, as Executive Director of the United States Civil Service Commission; and ASA T. BRILEY, Regional Director of the United States Civil Service Commission, are responsible for the administration of the United States Civil Service both nationally and in San Francisco, California.

2. Defendants ROBERT L. KUNZIG, as Administrator of the United States General Services Administration; and THOMAS HANNON, Regional Administrator of General Services for the San Francisco Region, are responsible for the administration of the United States General Services Administration both nationally and in San Francisco, California.

3. Defendants ELLIOT RICHARDSON, as Secretary of the Department of Health, Education, and Welfare; and ROBERT

COOP, Regional Director of the Department of Health, Education, and Welfare, are responsible for the administration of the Department of Health, Education, and Welfare both nationally and in San Francisco, California.

4. Defendants WINTON BLOUNT, Postmaster General of the United States; LIM POON LEE, Postmaster of the City and County of San Francisco; and RUSSEL E. JAMES, Regional Director of the United States Post Office Department, are responsible for the administration of the Post Office both nationally and in San Francisco, California.

V. BASIS OF CLASS ACTION

1. Plaintiffs MOW SUN WONG, SIU HUNG MOK, ANNA YU, SISTER FRANCENE LUM, and KAE CHEONG LUI bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all other non-citizens of the United States who are similarly situated and aggrieved by the regulations and procedures adopted by the United States Civil Service Commission, G.S.A., H.E.W., the United States Post Office, and all other federal agencies, who do not permit them to be employed in competitive positions with the United States government.

2. Plaintiffs MOW SUN WONG, SIU HUNG MOK, ANNA YU, SISTER FRANCENE LUM, and KAE CHEONG LUI bring this action as a class action for the following reasons: the questions of law and fact are common to the plaintiffs and to the class they represent; the members of the class are so numerous as to make joinder impractical; the claims of the plaintiffs are typical of the claims of all members of the class; the plaintiffs fairly and adequately represent the claims of all members of the class; the defendants are acting on grounds generally applicable to the entire class; the question of law and fact common to the class predominates over any questions affecting individual members; and a class action will best provide a fair and efficient adjudication of the important issues at stake here.

VI. STATEMENT OF CLAIM

A.

1. Plaintiffs MOW SUN WONG and SIU HUNG MOK are immigrants from China who intend to become citizens of the United States. They came here understanding the principles

of freedom governing this country, with the expectation that through their own hard work they would be able to become useful citizens of the United States. To this end, MOW SUN WONG and SIU HUNG MOK have spent long and arduous hours attempting to learn English, to learn the principles of the United States Constitution, and to acquire necessary skills so that they can continue to support themselves and their families. Plaintiffs MOW SUN WONG's and SIU HUNG MOK's perseverance was rewarded when they were able to temporarily obtain employment through the STEP program. This program provided plaintiffs with training, a salary, and then assignment to an employer who may retain them after the STEP program terminates.

2. Plaintiff MOW SUN WONG was assigned to G.S.A. for work as a janitor. His performance at this job has been excellent and, consequently, his supervisor wishes to keep MOW SUN WONG employed as a regular employee of G.S.A.

3. MOW SUN WONG meets the requirements for this position with G.S.A. in every way save one: he is not a citizen of the United States.

4. The requirement of United States citizenship is not one imposed by his supervisor. It is a rule promulgated by the United States Civil Service Commission in its Federal Personnel Manual. The requirement applies to all jobs in which the general Civil Service examination must be taken in order to qualify for employment. This requirement of United States citizenship is the sole reason that MOW SUN WONG cannot presently be employed by G.S.A. He will continue to work at G.S.A. until his STEP employment terminates on February 19, 1971, with the hope that this unreasonable rule will meanwhile be changed.

5. SIU HUNG MOK was employed through the STEP program as a file clerk with the G.S.A. Federal Records Center. He likewise performed ably, and his supervisor also wanted to retain him on a permanent basis. The sole reason that he could not be retained was that he was not a citizen of the United States.

B.

1. ANNA YU is also not a citizen of the United States. She came to the United States in 1965 after completing English High School in Hong Kong. She attended Dominican College

and then completed her bachelor's degree in social welfare at the University of California at Berkeley.

2. On or about October 8, 1970 ANNA YU attempted to file an application through the United States Civil Service Commission for a position as a clerk typist. She completed the Personal Qualification Statement (see Exhibit "A" attached to this Complaint) and took the form to the Federal Building at 450 Golden Gate Avenue in San Francisco, California. The personnel clerk for the Civil Servce Commission informed Miss Yu that her answer to question No. 24—stating that she was not a citizen of the United States—made her application unacceptable.

C.

1. SISTER FRANCENE LUM was admitted in the Catholic Order, Sisters of Loretto, in 1947. She is not a citizen of the United States.

2. SISTER FRANCENE LUM received a Bachelor of Arts degree from Webster College, a Master's degree in education at St. Louis University, and has done graduate work at Stanford, Johns Hopkins, University of Kansas, and Seton Hall Universities. She taught mathematics and Chinese as a second language at the high school level for 15 years.

3. SISTER FRANCENE LUM attempted to apply for a position with the Civil Rights Division of H.E.W. She was told by Floyd Pierce, Regional Director, that she had to be rated to qualify for any position. When she contacted the Federal Job Information Center, she was told by the Information Officer that she could not be "rated" because she was not a citizen of the United States.

D.

1. KAE CHEONG LUI has been living in the United States since 1967. During this period, he has continuously sought employment in various capacities. Despite these efforts, he is presently unemployed and has been forced to depend on welfare for the support of his family.

2. In September of 1970, KAE CHEONG LUI was able to obtain work loading and unloading mail for the United States Post Office. On October 19, 1970, he was notified that he was being terminated from this employment because he was not a citizen of the United States (see Exhibit "B" attached to this Complaint). This was the sole reason for his termination.

E.

1. The situation of the plaintiffs represents only a minute portion of the unemployment problem among non-citizens in the United States. In 1969, around four million aliens reported that they were living in the United States. A large number of them have arrived in the United States in the last four years since the immigration quotas have been changed.

2. These immigrants face special problems in seeking employment in this country. They face a foreign culture, language, and system of government, while simultaneously they must battle the inherent problems of all poverty stricken persons. If all jobs were open to them, their task in seeking employment would still not be an easy one.

3. The magnitude of the unemployment problem can be seen in every facet of their lives. They are forced to live in ghettos, in homes that are spared from condemnation only because there are no other homes in which they could live. Their economic condition robs them of the very freedom they came to this country to enjoy.

F.

1. Despite these special problems of unemployment among immigrants, the United States Civil Service Commission and all other federal agencies refuse to allow non-citizens to seek jobs in the competitive service. According to publications of the United States Civil Service, 300,000 jobs in the federal government become available each year; yet non-citizens continue to be deprived of their rights and opportunity to compete for these jobs. Non-citizens are not permitted to compete with citizens in civil service examinations. The only time non-citizens may be employed are the few situations when qualified citizens are not available, or when agencies are filling positions excepted from the competitive civil service. Thus citizens of the United States have an arbitrary and unlawful advantage in seeking federal civil service jobs.

G.

1. In light of the employment discrimination faced by persons of foreign national origin, the President of the United States issued an executive order declaring a policy of equal employment opportunity in the federal government (see Exhibit "C" attached to Complaint). As stated in the executive order:

> It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, *or national origin*, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency.
>
> • • • • •
>
> The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer. . . .

Executive Order 11478, filed Aug. 8, 1969 (34 Fed. Reg. 153) [Emphasis added.]

2. In direct contradiction to this Order, the United States Civil Service Commission, G.S.A., H.E.W., the United States Post Office, and all other federal agencies do not permit non-citizens to apply for competitive civil service positions.

VII. FIRST CAUSE OF ACTION

As a FIRST CAUSE OF ACTION, plaintiffs reallege as if fully set forth the allegations set forth in parts I through VI of this Complaint, and further allege:

1. The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees that all persons residing in the United States are entitled to equal protection under the laws of the United States.

2. The present regulations and procedures of defendants do not allow non-citizens to apply for jobs with either their respective agencies or any other federal agencies.

3. The United States Civil Service Commission does not allow non-citizens to apply for jobs in the competitive Civil Service. Under Civil Service Commission regulations,

> A noncitizen may be appointed to a competitive position only as an exception to the general requirement that such positions be filed by United States citizens.
>
> Federal Personnel Manual, § 11.2.

4. The present position of the United States Civil Service Commission is further stated in the letter of its Executive Director, NICHOLAS J. OGANOVIC, to Mr. L. Ling-Chi Wang, on September 18, 1970. The letter states

> Thus the Civil Service Regulations have always required applicants for competitive examination to be citizens.
>
> • • • • •
>
> We appreciate that many competent Chinese aliens, as well as other resident aliens, have little chance to obtain Federal civil service jobs in the continental United States.

Letter from Nicholas J. Oganovic, Executive Director of the United States Civil Service Commission [attached as Exhibit "D" to this Complaint].

5. Furthermore, G.S.A., H.E.W., the United States Post Office, and all other federal agencies have similarly adopted regulations and procedures which deny plaintiffs and all others similarly situated their right to apply for jobs in these federal agencies.

6. Since citizens of the United States have the opportunity to compete for federal employment, this arbitrary discrimination against plaintiffs and other non-citizens under federal regulations and procedures denies them their rights to equal protection of the laws under the Due Process Clause of the Fifth Amendment of the United States Constitution.

VIII. SECOND CAUSE OF ACTION

As a SECOND CAUSE OF ACTION, the plaintiffs reallege as if fully set forth the allegations set forth in parts I through VII of this Complaint, and further allege:

1. The Fifth Amendment to the United States Constitution guarantees all persons in the United States are entitled to due process of law.

2. The regulations and procedures adopted by defendants and other federal agencies arbitrarily and irrationally deny plaintiffs and all others similarly situated their opportunity to compete for jobs within federal agencies.

3. This arbitrary and irrational denial, without providing plaintiffs any due process of law, violates plaintiffs' rights under the Due Process Clause of the Fifth Amendment of the United States Constitution

IX. THIRD CAUSE OF ACTION

As a THIRD CAUSE OF ACTION, plaintiffs reallege as if fully set forth the allegations set forth in parts I through VIII of this Complaint, and further allege:

1. Under the Civil Rights Act of 1964, the United States Congress established a federal right to be protected from discrimination under any program receiving federal financial aid.

2. Specifically, in Section 601 of the Civil Rights Act of 1964 (codified in 42 U.S.C. § 2000d), the United States Congress promulgated the following law:

> No person in the United States shall, on the ground of *race*, color, or *national origin*, be excluded from participation in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (Emphasis added)

3. The defendants are receiving federal financial assistance to administer their respective federal agencies.

4. Yet, defendants' regulations and procedures discriminating against the employment of non-citizens in these agencies exclude plaintiffs and all other members of the class they represent from these jobs because of their national origin. Furthermore, many members of the class are also excluded because of their Chinese ethnicity, their impoverished condition and/or—even for some members—their recent immigration to the United States.

5. By not allowing plaintiffs and all others similarly situated to apply for jobs in the competitive federal service, defendants are excluding them from being employed by federal agencies. Such an exclusion constitutes discrimination against them because of their national origin and, for many, because of their race, in violation of Section 601 of the Civil Rights Act of 1964 (codified in 42 U.S.C. § 2000d).

X. FOURTH CAUSE OF ACTION

As a FOURTH CAUSE OF ACTION, plaintiffs reallege as if fully set forth the allegations set forth in parts I through IX of this Complaint, and further allege:

1. Under Executive Order 11,478 (see Exhibit "C" attached to Complaint), the President of the United States has guaranteed equal employment opportunity to all persons, regardless of race, color, religion, sex, or national origin.

2. The United States Civil Service Commission, G.S.A., H.E.W., the United States Post Office, and all other federal agencies have failed to comply with this Order by arbitrarily

excluding aliens from employment in competitive civil service positions. Such an exclusion constitutes a denial of plaintiffs' rights under Executive Order 11,478.

XI. BASIS FOR INJUNCTIVE RELIEF

1. Plaintiffs and all members of the class they represent will suffer irreparable injury if immediate action is not taken to guarantee their equal opportunity to compete for employment in the United States Civil Service. Plaintiffs are suffering each day by being forced to take demeaning jobs, jobs with less pay, or by being forced onto the rolls of the unemployed. Each day, plaintiffs suffer immediate and irreparable harm through this denial of their right to compete equally for federal civil service appointments.

2. No previous application for the relief sought herein has been made to this or any other Court.

3. No adequate remedy at law is available to the plaintiffs or to members of the class they represent.

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all members of the class they represent, that this Court:

1. Issue preliminary and permanent injunctions preventing defendants and all other federal agencies from continuing to deny plaintiffs and all others similarly situated the opportunity to compete for jobs in the federal competitive civil service;

2. Issue a writ of mandamus compelling defendants to accord plaintiffs and all others similarly situated their Constitutional and statutory rights to compete for jobs in the federal competitive civil service. The writ of mandamus should require, in part, that defendants submit a plan—within 30 days of the issuance of the writ—which will demonstrate how non-citizens will be recruited and employed in competitive federal civil service positions.

3. Issue a declaratory judgment, declaring that the rules and regulations, promulgated by the United States Civil Service Commission and all other federal agencies, which deny non-citizens the opportunity to compete for federal employment violate plaintiffs' Constitutional and statutory rights to equal opportunity to pursue such jobs.

4. Order such other and further relief as this Court may deem appropriate.

Dated: December 22, 1970.

WONG, SIEDMAN & LOWE,
STEPHEN M. LOWE,
EDWARD H. STEINMAN,

/s/ Stephen M. Lowe
By STEPHEN M. LOWE,

/s/ Edward H. Steinman
EDWARD H. STEINMAN,
Attorneys for Plaintiffs.

VERIFICATION

STATE OF CALIFORNIA,
City and County of San Franciso, ss:

We, MOW SUN WONG, SIU HUNG MOK, ANNA YU, SISTER FRANCENE LUM, and KAE CHEONG LUI, are the plaintiffs in the within entitled action; we have read the foregoing Complaint for Injunctive, Mandamus, and Declaratory Relief and know the contents thereof; and we certify that the same is true of our own knowledge, except as to those matters which are therein stated upon our information or belief, and as to those matters we believe it to be true.

MOW SUN WONG.
SIU HUNG MOK.
ANNA YU.
SISTER FRANCENE LUM.
KAE CHEONG LUI.

Subscribed and sworn to before me this 22nd day of December, 1970.

MAY A. CHANG,
Notary Public—California.
City and County of San Francisco.

My commission expires July 14, 1973.

EXHIBIT "A" TO THE COMPLAINT

PERSONAL QUALIFICATIONS STATEMENT

IMPORTANT

READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE FILLING OUT YOUR STATEMENT

All requested information must be furnished. The information you give will be used to determine your qualifications for employment.

It is IMPORTANT that you answer all questions on your Statement *fully* and *accurately*; failure to do so may delay its consideration and could mean loss of employment opportunities.

If an item does not apply to you, or if there is no information to be given, please write in the letters "N.A." for Not Applicable.

GENERAL INSTRUCTIONS

- Use typewriter if available. Otherwise, write legibly or print clearly in dark ink.
- If you are applying for a specific civil service examination, follow exactly the directions in the examination announcement as well as the instructions for filling out this form.
- For a written examination, the admission card tells you what to do with this Statement.
- If the examination involves no written test, mail this Statement to the office named in the examination announcement. Be sure to mail to the same office any other forms required in the announcement.
- Notify the office with which you file this Statement of any change in your name or address.

INSTRUCTION RELATING TO SPECIFIC ITEMS

ITEM 10. LOWEST GRADE OR SALARY

- Enter the lowest grade OR the lowest salary you will accept. You will not be considered for any lower grade or salary, you will be considered for higher grades or salary. If you enter grade, do not enter salary.

ITEM 18. EXPERIENCE

- Take care to fill in these experience blocks carefully and completely. Your qualifications rating depends to a large part on your experience and employment history. Failure to give complete details may delay consideration of your Statement. Answers given in this item may be verified with former employers.
- When the block contains experience in more than one type of work (examples: carpentry and painting, or [illegible] sonnel and budget) estimate and indicate the approximate percentage of time spent on each type of work. Place these percentages in parentheses at the end of the description of the duties.
- *General Information*—If supervision over other employees was one of your duties, be sure to indicate the number and kind (and grades, if Federal Government) of employees supervised by you, and explain your duties as a supervisor under description of duties.
- Indicate in each block of Item 18 the name under which you were employed if it was different from the name in Item 4 of this Statement. Show former name in parentheses after "Description of Work."
- Use separate blocks if your duties, responsibilities, or salary level changed materially while working for the same employer. Treat each such change as a separate position.

PLEASE READ ADDITIONAL INSTRUCTIONS ON BACK OF THIS SHEET

ITEM 18. EXPERIENCE—(Continued)

- *Block 1*—Describe your present position in this block. Indicate in this block if you are now unemployed or if you have never been employed.
- *Blocks 2 and 3*—Describe in Block 2 the position you held just before your present position, and continue to work backwards using Block 3.
- *Need for additional blocks*—If you need more experience blocks, use Standard Form 171–A, Continuation Sheet, or a plain piece of paper. If you use plain paper, each experience block must contain all of the information requested in Item 18 of the printed Statement. If there is not enough space in any of the experience blocks to describe the positions held, continue the description on a plain piece of paper. Identify each plain sheet at the top by showing your name, birth date, examination or position title, and the block under Item 18 from which the description is continued. Attach these supplemental sheets on the top of page 3 at place marked, "Attach Supplemental Sheets or Forms Here."
- Include your military or merchant marine service in separate blocks in its proper order and describe major duty assignments.
- Experience acquired more than 15 years ago may be summarized in one block if it is not applicable to the type of position applied for.
- Account for periods of unemployment in separate blocks in order.
- Section 3311 of title 5, United States Code, provides that in examinations in which experience is a factor, credit will be granted for any pertinent religious, civic, welfare, service, and organizational activity which you have performed either with or without compensation. You may, if you wish, report such experience at the end of your employment history if you feel that it represents qualifying experience for the position(s) for which you are applying. Show actual time spent in each activity.
- Indicate estimated number of hours worked per week in the space provided if you were on part-time work.

ITEM 23. ACTIVE MILITARY SERVICE AND VETERAN PREFERENCE

- Five-point preference is granted to veterans if they are honorably separated from the armed forces: (a) after active duty during the periods April 6, 1917, to July 2, 1921, or December 7, 1941, to July 1, 1955, (b) after more than 180 consecutive days of active duty after January 31, 1955 (not counting service under an initial period of active duty for training under the "6-month" Reserve or National Guard programs); or (c) after service in a campaign for which a campaign badge has been authorized.
- If you claim five-point preference, you are not required to furnish records to support your claim until the time of appointment.
- Ten-point preference is granted in some cases to disabled veterans, including veterans awarded the Purple Heart, to widows of veterans, to wives of disabled veterans, and to mothers of deceased or disabled veterans. See Standard Form 15, Claim for 10-Point Veteran Preference.
- If you claim ten-point preference, complete Standard Form 15 and attach it, together with the proof called for in that form, to this Statement.

ITEM 23. MEMBERSHIP IN ORGANIZATIONS

- Answer each part of this question carefully. Admitted past membership and participation in an organization of the type to which this question refers does not by itself disqualify you for Government employment. Consideration will be given to the nature of the organization, the extent of your participation, and any other relevant facts and circumstances.

ITEM 31. RELATIVES EMPLOYED BY THE UNITED STATES GOVERNMENT

- A Federal official (civilian or military) may not appoint any of his relatives or recommend them for appointment, and a relative who is appointed in violation of this restriction can not be paid. There are also restrictions on making a career or career-conditional appointment in the competitive service when a person is not entitled to veteran preference and two or more members of his family are already serving in the competitive service under a career or career-conditional appointment. Thus it is necessary to have information about your relatives who are working for the Government.

CERTIFICATION

- Be careful that you have answered all questions on your Statement correctly and considered all statements fully so that your eligibility can be decided on all the facts. Read the certification carefully before you sign and date your Statement.
- Sign your name in ink.
- Use one given name, initial or initials, and surname.

PLEASE DETACH THIS INSTRUCTION SHEET BEFORE SUBMITTING YOUR STATEMENT

553-034 O - 74 - 2

PERSONAL QUALIFICATIONS STATEMENT

Budget Bureau Approved 10-R030

1a. Kind of position (job) you are filing for (or title of examination) | b. Announcement number

7. Birth date: Month | Day | Year

8. Social Security Number

c. Organization for which you wish to be considered (if listed in announcement)

d. Primary place(s) you wish to be employed

9. If you are currently on a register of eligibles for appointment to a Federal position, give the name of the examining team, the name of the office maintaining the register, the date on your notice of rating, and your rating.

2. Home telephone: Area Code | Number

3. Business telephone: Area Code | Number

4. Name (Last) (First) (Middle) (Maiden, if any) ☐ Mr. ☐ Miss ☐ Mrs.

10. Lowest pay or grade you will accept: PAY $ per | OR GRADE

5. Number and street: R.D., or Post Office box number

6. City | State | ZIP Code

11. Are you willing to travel? (Check one) NO | SOME | OFTEN

12. When will you be available?

13. Will you accept	YES	NO	(C) Will you accept a job in	YES	NO
(A) Temporary appointment of —1 month or less?			—Washington, D.C.?		
—1 to 4 months?			—any place in the United States?		
—4 to 12 months?			—outside of the United States?		
(B) Less than full time work? (Less than 40 hours per week)			—only in (specify)		

14. EDUCATION

(A) Did you graduate from high school, or will you graduate within the next nine months? YES ☐ NO ☐ MONTH/YEAR | (B) HIGHEST GRADE COMPLETED

(B) Name and location (city and State) of last high school attended

(C) Name and location (city, State, and ZIP Code if known) of college or university. (If you expect to graduate within 9 months, give MONTH and year you expect degree.)

Dates attended From	To	Years completed Day	Night	Credits completed Semester hours	Quarter hours	Type of degree	Year of degree

(D) Chief undergraduate college subjects	Credits completed Semester hours	Quarter hours	(E) Chief graduate college subjects	Credits completed Semester hours	Quarter hours

(F) Major field of study at highest level of college work

(G) Other schools or training (for example, trade, vocational, armed forces, or business). Give for each the name and location (city, State, and ZIP Code if known) of school, dates attended, subjects studied, certificates, and any other pertinent data.

15. HONORS, AWARDS, AND FELLOWSHIPS RECEIVED

16. FOREIGN LANGUAGES

Show foreign languages and indicate your knowledge of each by placing X in proper column.

	Reading Fair	Good	Excl	Speaking Fair	Good	Excl	Understanding Fair	Good	Excl	Writing Fair	Good	Excl

17. Special qualifications and skills (languages, skills with machines, patents or inventions, publications—do not submit copies unless requested, public speaking, membership in professional or scientific societies, typing or shorthand speed, etc.)

THE FEDERAL GOVERNMENT IS AN EQUAL OPPORTUNITY EMPLOYER

Standard Form 171 (Formerly SF 57) June 1968 U.S. Civil Service Commission

PLEASE BE SURE TO READ ATTACHED INSTRUCTIONS BEFORE COMPLETING ITEM 18

18. EXPERIENCE (Start with your PRESENT position and work back)

May inquiry be made of your present employer regarding your character, qualifications, and record of employment? YES ☐ NO ☐

1 | Dates of employment (month, year) From: To PRESENT TIME | Exact title of position | If Federal service, classification series and grade

Salary or earnings Starting $ per Present $ per | Avg. hrs. per week | Place of employment City State | Number and kind of employees supervised | Kind of business or organization (manufacturing, accounting, insurance, etc.)

Name and title of immediate supervisor | Name of employer (firm, organization, etc.) and address (including ZIP Code if known)

Area Code and phone No. if known

Reason for wanting to leave

Description of work

For agency use (staff rate, etc.)

2 | Dates of employment (month, year) From: To | Exact title of position | If Federal service, classification series and grade

Salary or earnings Starting $ per Final $ per | Avg. hrs. per week | Place of employment City State | Number and kind of employees supervised | Kind of business or organization (manufacturing, accounting, insurance, etc.)

Name and title of immediate supervisor | Name of employer (firm, organization, etc.) and address (including ZIP Code if known)

Area Code and phone No. if known

Reason for leaving

Description of work

For agency use (staff rate, etc.)

3 | Dates of employment (month, year) From: To | Exact title of position | If Federal service, classification series and grade

Salary or earnings Starting $ per Final $ per | Avg. hrs. per week | Place of employment City State | Number and kind of employees supervised | Kind of business or organization (manufacturing, accounting, insurance, etc.)

Name and title of immediate supervisor | Name of employer (firm, organization, etc.) and address (including ZIP Code if known)

Area Code and phone No. if known

Reason for leaving

Description of work

For agency use (staff rate, etc.)

IF YOU NEED ADDITIONAL EXPERIENCE BLOCKS, USE ANOTHER SHEET OF PAPER

ATTACH SUPPLEMENTAL SHEETS OR FORMS HERE
Answer all questions correctly and fully

19. If you have ever been employed by the Federal government as a civilian, give your last:

Grade	Job Title

20. Birth place
City
State or foreign country

21. Legal or voting residence (State)

22. REFERENCES. List three persons who are NOT related to you and who have definite knowledge of your qualifications and fitness for the position for which you are applying. Do not repeat names of supervisors listed under Item 18, EXPERIENCE.

Full Name	Present Business or Home Address (Number, street, city, State and ZIP Code)	Business or Occupation

23. VETERAN PREFERENCE. A. Have you ever served on active duty in the United States military service? (Exclude tours of active duty for training as a member of Guard/Reserve.) — Yes / No

If "Yes," complete items B through E below.

B. List for all active military service:

Dates (From–To)	Branch	Serial or Service Number

C. Have you ever been discharged from the armed services under other than honorable conditions? (You may omit any such discharge changed to honorable by a Discharge Review Board or similar authority.) — Yes / No

If "Yes," give details in Item 34.

D. Do you claim 5 point preference based on active duty in the armed forces? — Yes / No

If "Yes," you will be required to furnish proofs in support your claim at the time you are appointed.

E. Do you claim 10 point preference? — Yes / No

If "Yes," complete and attach Standard Form 15, Claim for 10-point Veterans Preference, together with the proof called for in that form.

ANSWER ITEMS 24 THROUGH 33 BY PLACING AN "X" IN THE PROPER COLUMN	Yes	No
24. Are you a citizen of the United States? If "No," give country of which you are a citizen.		
25. Before answering this question read Item 25 in the attached instructions. A. Are you now, or within the last ten years have you been, a member of: (1) The Communist Party, U.S.A., or any subdivision of the Communist Party, U.S.A.? (2) An organization that to your personal knowledge advocates the overthrow of the constitutional form of government of the United States by force or violence or other unlawful means? B. If your answer to Item A(1) or A(2) is "Yes," give your answers to the following questions in Item 34 or on a separate piece of paper: (1) The name of the organization? (2) The dates of your membership? (3) Your understanding of the aims and purposes of the organization at the time of your membership?		
26. To insure that you are not placed in a position which might impact your health, or which might be a hazard to you or to others, we need information about the following: Do you have, or have you had, heart disease, a nervous breakdown, epilepsy, tuberculosis, or diabetes? If your answer is "Yes" on answering any one of these, give details in Item 34.		
27. Within the last five years have you been fired from any job for any reason?		
28. Within the last five years have you quit a job after being notified that you would be fired? If your answer to 27 or 28 above is "Yes," give details in Item 34. Show the name and address (including ZIP Code) of employer, approximate date, and reason in each case. This information should agree with your answers in Item 18, EXPERIENCE.		
29. Have you ever been convicted of an offense against the law or forfeited collateral, or are you now under charges for any offense against the law? (You may omit: (1) traffic violations for which you paid a fine of $150.00 or less, and (2) any offense committed before your 21st birthday which was finally adjudicated in a juvenile court or under a Youth Offender law.)		
30. While in the military service were you ever convicted by general court-martial? If your answer to 29 or 30 is "Yes," give details in Item 34. Show for each offense: (1) date, (2) charge, (3) place, (4) court, and (5) action taken.		
31A. Does the United States Government employ in a civilian capacity or as a member of the Armed Forces any relative of yours (e.g., wife, husband or mother)? (See Item 31 in the attached instruction sheet.)		
B. Do you live with, or within the past 12 months have you lived with, any of these relatives who are employed in a civilian capacity? If your answer to A is "Yes," give on Item 34 for each relative: (1) full name, (2) present address (including ZIP Code), (3) relationship, (4) department, agency, or branch of the Armed Forces. If your answer to B is "Yes," also give the kind of appointment held by the relative(s) you live with or have lived with within the past 12 months.		
32. Do you receive or have you applied for retirement pay, pension, or other compensation based upon military or Federal civilian service? If your answer is "Yes," give details in Item 34.		
33. Are you an official or employee of any State, territorial, county, or municipal government? If "Yes," give title of position or name of office, and location, in Item 34. Do not mention elected or appointed		

34. Space for detailed answers; indicate item numbers to which answers apply:

Item No.

If more space is required, use full sheets of paper, identify the same as this page. Write on EACH sheet your name, birth date, and examination or position, if any. Attach all sheets to this Statement at the top of Page 1.

ATTENTION: READ THE FOLLOWING PARAGRAPH CAREFULLY BEFORE SIGNING THIS STATEMENT

A false answer to any question in this Statement may be grounds for not employing you, or for dismissing you after you begin work, and may be punishable by fine or imprisonment (U.S. Code, Title 18, Sec. 1001). All statements are subject to investigation, including a check of your fingerprints, police records, and former employers. All the information you give will be considered in reviewing your Statement and is subject to investigation. A false answer to Items 33 A or B could deprive you of your right to an annuity when you reach retirement age in addition to the penalties described above.

CERTIFICATION

I CERTIFY that all of the statements made in this Statement are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

SIGNATURE (Sign in ink)

DATE SIGNED

DO NOT WRITE IN THIS BLOCK—FOR USE OF EXAMINING OFFICE ONLY

Refer for medical action — Medical action Approved by — Disapproved (Name)

Name — Announcement No. — Form Approved — Date Received — Date Approved — Option — Appointment No. — Appointment — Nonstatus — Veterans' Preference — 5 Points (Tent.) — 10 Points (Comp. Disb.) — Other 10 Points — Total — Rating (Incl. pref.) — Augmented Rating — Remarks — Married — Widowed — Separated — Veterans and Date

THIS SPACE FOR USE OF APPOINTING OFFICER ONLY

☐ 5 Pt. ☐ 10 Pt. Comp. Disab. ☐ 10 Pt. Other

Preference has been verified through proof that the veteran was under honorable conditions and (if applicable) has been separated

Signature and Title — Date

Agency

EXHIBIT "B" TO THE COMPLAINT

Special Delivery

October 19, 1970

Mr. Kae Cheong Lui
752 Vallejo Street
San Francisco, CA 94133

Dear Mr. Lui:

Your personnel records indicate that you are not a citizen of the United States. Therefore, it is necessary to terminate your services effective close of business October 20/1970 in accordance with the Postal Manual Regulations 711.531.

Sincerely yours,

/s/ Lim P. Lee
Lim P. Lee
Postmaster

/s/ T. R. White
By: T. R. White
Acting Chief,
Employment & Services

EXHIBIT "C" TO THE COMPLAINT

12985

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 11478

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

BEST COPY AVAILABLE

[illegible] and [illegible] to and agencies in the conduct of [illegible] employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order [illegible] that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate [illegible] program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

SEC. 4. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 5. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

SEC. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Richard Nixon

THE WHITE HOUSE,
August 8, 1969.

[F.R. Doc. 69-9556; Filed, Aug. 9, 1969; 4:24 p.m.]

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Exhibit "D" to the Complaint

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D.C. 20415, September 18, 1970.

MR. L. LING-CHI WANG,
Co-Chairman, Coordinating Committee, Chinese for Affirmative Action 350 Union Street, Suite 309, San Francisco, California 94133

DEAR MR. WANG: I appreciate having this opportunity to comment on the citizenship requirement for Federal service in reply to your August 20, 1970, letter.

When considering employment of noncitizens in the Federal service, we draw a line between employment in the competitive civil service and other Federal employment. Generally speaking, appointments to positions in the competitive civil service are intended to lead to eventual career tenure, which entitles a person to receive all the rights and privileges granted by the Government to its career employees. It has been considered a just and equitable policy since the passage of the Civil Service Act of 1883 that such tenure in our country's Government be reserved for its citizens. The legislative history of the Act shows that Members of Congress repeatedly stated that applicants for civil service examinations must be citizens of the United States. Thus the Civil Service Regulations have always required applicants for competitive examination to be citizens.

We see nothing unreasonable or illegal in this long-established policy. Most, if not all, nations having sophisticated legal systems and large numbers of civil servants tend to regard government employment as a privilege restricted to citizens. When a lawfully admitted alien becomes a naturalized citizen, he is eligible to compete in civil service examinations and be considered for employment by the Federal Government in competitive positions on an equal basis with other citizens.

There are provisions, however, for eligible noncitizens to be employed in the Federal service when qualified citizens are not available or when agencies are filling positions excepted from the competitive civil service. A qualified noncitizen may be appointed in such a case if the agency is not prohibited from employing persons from his country. For many years most agencies have been prohibited by law from using their appropriated funds to employ noncitizens in the continental United States. But there are certain exceptions to the law. Some agen-

cies, such as the Department of Defense, are excepted from the prohibition. In addition, citizens of certain countries are also excepted. This exception includes nationals of countries allied with the United States in the current defense effort. Thus although a citizen of the Republic of China, for example, generally could not be appointed to a competitive position in the Federal service, he could be appointed to an excepted position for which he is qualified. In this connection, the Department of Commerce has authority to make excepted appointments of census enumerators, and thus it has been able to hire non-citizens for this purpose.

We appreciate that many competent Chinese aliens, as well as other resident aliens, have little chance to obtain Federal civil service jobs in the continental United States. Nevertheless, in light of the reasons for adoption of the long-standing policy on citizenship in the competitive civil service, we do not consider that it violates the principles of Executive Order 11478 on equal employment opportunity.

While I know I have not given you the kind of answer you sought, I hope I have given you some helpful background on the basis for our policy on citizenship.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

By NICHOLAS J. OGANOVIC,
Executive Director.

[Caption Omitted]

Affidavit of Mow Sun Wong

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, MOW SUN WONG, being duly sworn, hereby depose and say:

1. I am a resident of San Francisco, California, presently residing at 462 Union Street. I am 38 years old. I came to the United States from Hong Kong in June of 1969.

2. Before I came to the United States, I had completed vocational school in China, where I was trained as an electrical engineer. I worked in that capacity for over 10 years.

3. When I came to the United States, I was only able to obtain work as a grocery clerk. I remained as a grocery clerk for four months.

4. In February of 1970, I had the opportunity to learn English in a program sponsored by the Federal Manpower Development and Training Act. I thought that I would be more able to support my family if I learned English through this program.

5. On August 24, 1970, I began working under the California Supplemental Training and Education Program (STEP). The program provides training by placing the person in a job where he can learn skills to make him more employable.

6. Through this program, I was placed with the United States General Services Administration working as a janitor. My supervisor has informed me and my attorneys that my work has been execellent and that he would like to have me remain on the job.

7. Unfortunately, my supervisor has informed me that I am not eligible for this job because I am not a United States citizen and because federal laws prohibit the hiring of non-citizens in federal employment.

MOW SUN WONG.

Subscribed and sworn to before me this 18th day of December, 1970.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Caption Omitted]

Affidavit of Siu Hung Mok

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, SIU HUNG MOK, being dulp sworn, hereby depose and say:

1. I am a resident of San Francisco, California. I arrived here from Macao in October of 1968.

2. Before I came to the United States, I had 18 years of experience as a businessman in both China and Macao.

3. Since my arrival in the United States, I have had various short-term jobs, such as a grocery clerk, a cook's helper, and working in a meat market.

4. In early 1970, I joined the classes in English given by the Manpower Development and Training Act Skill Center, a Center funded by federal monies. I have attended classes there regularly to improve my ability in English.

5. On August 8, 1970, I was placed with the Federal Records Center through the California Supplemental Training and Education Program (STEP). I was employed there as a file clerk.

6. My supervisor at the Federal Records Center, Stephen Chow, informed me that my work as a file clerk was fine, but that I could not be retained as a permanent employee of the Federal Records Center because I am not a citizen of the United States and because federal laws prohibit the hiring of non-citizens in federal employment.

SIU HUNG MOK.

Subscribed and sworn to before me this 18th day of December, 1970.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Caption Omitted]

Affidavit of Anna Yu

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, ANNA YU, being duly sworn, hereby depose and say:

1. I am a Chinese resident of San Francisco, California. I came to this country from Hong Kong in 1965.

2. I graduated from English High School in Hong Kong, studied for one year at Dominican College and graduated from the University of California, Berkeley, in September of 1969.

3. On or about October 8, 1970, I attempted to file an application to become a clerk typist with the federal government. I completed the Personal Qualification Statement and brought it to the Personnel Clerk at the Federal Office Building, 450 Golden Gate Avenue, San Francisco, California.

4. I was informed by that clerk that I had to be a citizen of the United States in order to take the typing test. That person also said there were no exceptions to this. The clerk also said

I could not appeal this action, since the laws of the United States do not allow non-citizens to work in competitive federal jobs.

ANNA YU.

Subscribed and sworn to before me this 18th day of December, 1970.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Caption Omitted]

Affidavit of Sister Francene Lum

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, SISTER FRANCENE LUM, being duly sworn, hereby depose and say:

1. I was born in Hankow, China, on March 18, 1918. I came to the United States in September 1946 and was admitted as a Sister of Loretto in 1947.

2. My educational background includes a Bachelor of Arts from Webster College, a Master in Education at St. Louis University, and periods of graduate study at Stanford, Johns Hopkins, University of Kansas and Seton Hall Universities.

3. I have 15 years experience as a teacher of mathematics and Chinese as a second language in high school.

4. Presently, I am teaching English as a second language to immigrants who are participants in the training program sponsored under the Manpower Development and Training Act. I have been working in this capacity for approximately 11 months.

5. On November 20, 1970 the California Department of Human Resources Development informed me that there was a position available as an evaluator of educational programs with the Department of Health, Education, and Welfare.

6. I attempted to pursue this opening, and arranged for an interview with Floyd Pierce, Regional Director of Civil Rights for the Department of Health, Education, and Welfare. He told me that in order to apply for any opening I would have to get a rating for that position.

7. I then called the Federal Job Information Center to see if I could be rated for a position. I was told that in order to be rated I would have to be a citizen of the United States.

8. Thus, despite my qualifications I have not been permitted to assume any position with the Department of Health, Education, and Welfare simply because I am not a citizen of the United States.

SISTER FRANCENE LUM.

Subscribed and sworn to before me this 18th day of December, 1970.

MAY A. CHANG,
Notary Public of California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Captioned Omitted]

Affidavit of Kae Cheong Lui

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, KAE CHEONG LUI, being duly sworn, hereby depose and say:

1. I am a Chinese resident of San Francisco, California. My immediate family includes my wife and our six children.

2. I was trained and employed as a scale-maker in China for two years.

3. Since I came to the United States in September of 1968, I have held various jobs, including work as a busboy and a dishwasher.

4. On October 9, 1970, I was able to obtain a job with the United States Post Office, loading and unloading mail. My work at this position was fine but on October 19, 1970, I was notified that my job was being terminated solely because I am not a citizen of the United States.

5. Since that time I have remained unemployed and have been forced to rely on welfare to support my family.

KAE CHEONG LUI.

Subscribed and sworn to before me this 18th day of December, 1970.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

GENERAL SERVICES ADMINISTRATION,
Region 9, 49 Fourth Street,
San Francisco, California 94103, December 18, 1970.

To Whom It May Concern:

I am a Custodial Force Supervisor of Public Buildings for the United States Government, General Services Administration in San Francisco, California. I have served as a Supervisor for nearly 30 years.

In August of 1970, Mr. MOW SUN WONG began working under my Supervision as a Laborer with the General Services Administration. Mr. WONG has been employed under the California Supplemental Training and Employment Program (STEP).

Since Mr. WONG began working under my Supervision, his performance has been outstanding. He has proved to be a most competent and fine employee and has been a most cooperative employee. His attendance has been excellent.

I would like very much to have Mr. WONG stay on as Laborer with the General Services Administration. However, due to the Federal Regulation against the employment of non-citizens, he will not be able to continue his employment after February 19, 1971.

/s/ John S. Verducci,
JOHN S. VERDUCCI,
Custodial Force Supervisor.

[Caption Omitted]

[Filed Feb. 25, 1971, C. C. Evensen, Clerk]

Amended Notice of Motion for Summary Judgment

TO THE DEFENDANTS and their attorneys, JAMES L. BROWNING, JR., U.S. ATTORNEY, and BRIAN B. DENTON, Assistant U.S. Attorney, 450 Golden Gate Avenue, San Francisco, California:

PLEASE TAKE NOTICE that the undersigned attorneys for the plaintiffs will make their Motion for Summary Judgment before the Honorable Robert F. Peckham, U.S. Court-House, 450 Golden Gate Avenue, San Francisco, California on

Friday, the 19th day of March, 1971 at 2:30 p.m, or as soon thereafter as motion may be heard rather than as previously scheduled for February 19, 1971.
Dated: February 24, 1971.

WONG, SIEDMAN & LOWE,
By /S/ Stephen M. Lowe
STEPHEN M. LOWE,
/S/ Edward H. Steinman
EDWARD H. STEINMAN.

[Caption Omitted]

[Filed Apr. 2, 1971, C. C. Evensen, Clerk]

Notice of Motion

To the Plaintiffs and their attorney: STEPHEN M. LOWE, Esq., WONG, STEIDMAN AND LOWE, 250 Columbus Avenue, San Francisco, California 94133.

PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants will make their Motion to Dismiss before the Honorable Robert F. Peckham, United States District Court, 450 Golden Gate Avenue, San Francisco, California, 94102, on the 16th day of April 1971, at 2:30 p.m., or as soon thereafter as this Motion may be heard, as that is the date and time set for hearing on Plaintiffs' Motion for Summary Judgment.

* * * * *

Motion to Dismiss

The undersigned attorneys, on behalf of the named Defendants, move this Honorable Court to dismiss the Complaint and action for lack of jurisdiction of the subject matter, and failure to state a claim upon which relief can be granted. This Motion is based upon the Reasons and Authorities hereinafter set forth.

Dated: April 2, 1971.

JAMES L. BROWNING, Jr.,
United States Attorney.

By BRIAN B. DENTON,
Assistant United States Attorney,
Attorneys for the Defendants.

[Caption Omitted]

Affidavit of Tom Tung Bor in Support of Plaintiffs' Motion for Summary Judgment

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, TOM TUNG BOR, being duly sworn, hereby depose and say:

1. I am a Chinese resident of San Francisco. I was born in Hong Kong in January 1948 and came to this country with my family in 1955.

2. I attended both elementary and secondary school in San Francisco, and on January 16, 1969 I was drafted into the United States Army. I served in the Army until August 20, 1970 at which time I received an honorable discharge.

3. During my 19 month service with the military, I achieved the rank of Sergeant E–5. I served 14 of those months in Korea.

4. Upon returning to the United States, I sought employment at both the United States Post Office and the United States Civil Service Commission. At both places, I was informed that the federal government would not hire me for any position, because I was not a citizen.

5. Since I have spent nearly two years in the military service of this country, I feel it is most unfair that I cannot work for the federal government. If the federal government deems me qualified and loyal enough to serve in its military, then I do not understand why I am not given the opportunity to be a qualified, loyal postal employee or the like.

6. Besides serving this country in the military, I also am a taxpayer and subject to other government requirements. For these reasons, I strongly agree with the plaintiffs in the above-entitled action that the federal restrictions against the employment of non-citizens are unconstitutional and unfair.

TOM TUNG BOR.

Subscribed and sworn to before me this 31st day of December, 1970.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Caption Omitted]

Affidavit of Yisung Lei in Support of Plaintiffs' Motion for Summary Judgment

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, YISUNG LEI, being duly swon, hereby depose and say:

1. I work and reside in the Chinatown area of San Francisco. I am not a citizen of the United States.

2. Before comnig to the United States in 1965, I studied and worked in Hong Kong. I received a Bachelor of Arts degree in history and English literature from the New Asian College in Hong Kong in 1954. Thereafter, I taught high school English in both Hong Kong and Malaysia.

3. Since coming to the United States, I have received a Master's degree in English from the College of Holy Name in Oakland in 1967. I have worked as a general laborer for Montgomery Ward, and also worked for a newspaper in Chinatown, the Chinese World. I am currently employed as a security trainee with the State of California Department of Human Resources Development in Chinatown.

4. On December 22, 1970—the date upon which the above-entitled action was filed—I went to the Federal Job Information Center at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California. I went to apply for an engineering aide position with the federal government; since I have taken units in architectural drafting at Merritt College in Oakland I feel my educational background and experiences would qualify me for such a position.

5. Unfortunately, I was informed by Mrs. Roberts at the Federal Job Information Center that I would not be allowed to apply to take an examination for an engineering aide position, since I was not a citizen of the United States. Though I vigorously contended that this could not be so, she assured me that the law prohibited non-citizens like myself from even applying for such a job. When I asked to talk to her supervisor, she said there was no need for me to do so because the law was clear. She also told me that I could not appeal her decision, since the United States Civil Service laws explicitly denied me the right to apply for a federal position.

6. I have now learned that thousands of other non-citizens are faced with the same type of restrictions that confronted me at the Federal Job Information Center. Since most of us have the skills and experience necessary for federal employment, and since we are subject—like citizens—to paying taxes and other such requirements, I feel it is totally unfair for the federal government to deny me the right to apply for, let alone hold, federal employment.

7. Therefore, I am writing this affidavit to strongly support the efforts of the five plaintiffs in the instant matter, who are seeking to change these federal restrictions. Though the United States has encouraged and allowed me to file a declaration of intent to become a citizen, its own laws do not permit me to work for it. Such an unfair and inconsistent situation must be changed.

YISUNG LEI.

Subscribed and sworn to before me this 24th day of December, 1970.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Caption Omitted]

Affidavit of Mow Sun Wong in Support of Motion for Summary Judgment

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, MOW SUN WONG, being duly sworn, hereby depose and say:

1. I filed my Declaration of Intention to Become a Citizen in August, 1970 at San Francisco, California.

2. I hereby declare that I owe allegiance to the United States.

MOW SUN WONG.

Subscribed and sworn to before me this 4th day of June, 1971.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Caption Omitted]

Affidavit of Siu Hung Mok in Support of Motion for Summary Judgment

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, SIU HUNG MOK, being duly sworn, hereby depose and say:

1. I filed my Declaration of Intention to Become a Citizen in August, 1970 at San Francisco, California.

2. I hereby declare that I owe allegiance to the United States.

SIU HUNG MOK.

Subscribed and sworn to before me this 4th day of June, 1971.

MAY A. CHANG,
Notary Public, California,
City and County of San Francisco.

My commission expires July 14, 1973.

[Original filed Mar. 18, 1974; Clerk, U.S. Dist. Court, San Francisco]

In the United States District Court for the Northern District of California

No. C–70–2730–RFP

MOW SUNG WONG, ET AL., PLAINTIFFS

v.

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, ET AL., DEFENDANTS

Order

Pursuant to the remand of the United States Court of Appeals for the Ninth Circuit in WONG vs. HAMPTON, No. 72–1079 (January 25, 1974):

IT IS ORDERED that defendants, and each of them, and their successors, agents, and employees:

1. Be enjoined from continuing to deny plaintiffs and all others similarly situated the opportunity to compete for federal employment.

2. Within 30 days of the entry of this order defendants are ordered to show this Court all steps taken or to be taken to

implement the decision of the Ninth Circuit Court of Appeals referred to above.

3. Defendants' motion for stay of judgment is denied.

Approved as to form only:

/S/ BRIAN B. DENTON.

Dated: March 18, 1974.

/S/ ROBERT F. PECKMAN,
Judge of the District Court.

[Filed, Apr. 26, 1974; Clerk, U.S. Court of Appeals]

In the United States Court of Appeals for the Ninth Circuit

No. 72–1079

MOW SUN WONG, ET AL., APPELLANTS

v.

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, ET AL., APPELLEES

Order

Before: WRIGHT and WALLACE, Circuit Judges:

The opinion herein was filed on January 25, 1974 and the judgment issued to the district court on February 14. Pending further order of this court, the mandate is recalled.

Dated:

[Filed May 21, 1974; Clerk, U.S. Dist. Court, San Francisco]

In the United States District Court for the Northern District of California

Civil No. C–70–2730–RFP

MOW SUNG WONG, ET AL., PLAINTIFFS

v.

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, ET AL., DEFENDANTS

Order

This matter came regularly on for hearing on May 6, 1974 at 10:00 a.m. before this Court for hearing on the status of the

Court's Order filed March 18, 1974 and upon Defendants' Motion to Vacate the Order of March 18, 1974. The Motion to Vacate, having been submitted to the Court both on the written record and based upon oral arguments, and the Court being fully advised in the premises, stayed its Order entered March 18, 1974 which was issued pursuant to the remand of the United States Court of Appeals for the Ninth Circuit in this cause, and therefore;

IT IS HEREBY ORDERED AND DECREED that:

The Court's Order of March 18, 1974 is hereby stayed until final disposition by the Supreme Court of this cause, for the reason that the United States Court of Appeals for the Ninth Circuit on April 26, 1974 issued an Order recalling its mandate issued to this Court on February 14, 1974.

Dated: May 15, 1974.

ROBERT F. PECKMAN,
United States District Judge.

Approved as to form only

SAN FRANCISCO NEIGHBORHOOD
LEGAL ASSISTANCE FOUNDATION
/S/ David C. Moon,
DAVID C. MOON,
Attorney for Plaintiffs.

Affidavit of Robert E. Hampton

In the Supreme Court of The United States

Affidavit in Support of Motion to Stay

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, ET AL., APPELLANTS

v.

MOW SUN WONG, ET AL., APPELLEES

Affidavit

Robert E. Hampton, first being duly sworn, deposes and says that he is the Chairman of the United States Civil Service Commission and that he makes this affidavit in support of the Government's Motion to Stay the Mandate of the United States Court of Appeals for the Ninth Circuit and the Order of the United States District Court for the Northern District of California issued in the above-captioned case.

On March 18, 1974, the United States District Court for the Northern District of California enjoined the Civil Service Commission from continuing to deny the respondents, and other resident aliens, the opportunity to compete for Federal employment. The court further ordered that within thirty days of the entry of its order, the Civil Service Commission show the court all steps taken or to be taken to implement the decision of the Ninth Circuit Court of Appeals. The order of the district court was made pursuant to the mandate of the Ninth Circuit Court of Appeals. The district court denied the Government's motion to stay its order and on April 17, 1974, the Ninth Circuit denied the Government's Motion to Stay or Withdraw its Mandate Pending Application for Certiorari and to Stay the Order of the District Court.

To comply with the order of the District Court enjoining the Commission from denying resident aliens the opportunity to compete for Federal employment, the Civil Service Commission instructed its Washington Area Office and its Regional Offices to accept and process to completion all applications received from resident aliens. Two hundred applications have been processed to completion through the week ending April 13, 1974. Anticipating that the Solicitor General would file a petition for a writ of certiorari and that the Government would be granted a stay of the judgment of the Ninth Circuit Court of Appeals, and concerned that, with certain exceptions, payments to noncitizens was prohibited by a provision in appropriations acts not stricken by either the district court or court of appeals, the Commission directed that resident alien applicants not be issued notices of rating or certified for appointment to positions in the competitive civil service.

Since the Government has been unsuccessful in obtaining the requested stays, it may now be necessary for the Commission to authorize agencies to appoint resident aliens into the competitive civil service in order to fully comply with the order of the district court. The only orderly manner in which their appointment can be accomplished is through a change in the Commission's regulations. However, the issuance of such regulations would be subject to retraction if the Supreme Court reversed the Ninth Circuit. The Commission would then be left with the dilemma of either permitting resident aliens to retain competitive positions to which they have already been appointed, in violation of the Commission's qualification stand-

ards, or separating them from employment. The latter course would be disruptive to the employee and to his agency.

The very process of issuing new regulations is time consuming and costly. Good management would dictate that the proposed regulations be submitted to the various affected departments and agencies of the Executive Branch for comment and expression of their views. After agency consultation, the Commission would review the comments of the departments and agencies and revise the proposed regulations, as appropriate. Issuance of new regulations requires their publication in the Federal Register, revision of the Title 5 of the Code of Federal Regulations, and revision of the instructional material published in the Commission's Federal Personnel Manual and the personnel manuals of each department and agency of Government affected by the regulations. We would also anticipate the devotion of numerous man hours by Commission and agency personnel in explaining, interpreting, and applying the new regulations. The need for explanation and interpretation is demonstrated by the many inquiries on the status of alien employment which the Commission has received since the decision of the Ninth Circuit Court of Appeals. These inquiries reflect a general state of confusion which may well have been aggravated by the inability of the Government to obtain a timely stay of the judgment of the Ninth Circuit.

The difficulty attending the issuance of new regulations is compounded in this instance by the need (1) to identify positions of a policy-making and sensitive nature for which, as the Ninth Circuit indicated, citizenship might remain a qualification under new regulations and (2) by the provision in annual appropriation acts referred to earlier. This provision places limitations on the authority of most Federal departments and agencies to pay aliens from appropriated funds. However, nationals of certain specified countries and countries allied with the United States in the current defense effort are exempt from the prohibition against payment of aliens. Additionally, certain agencies, such as the Department of Defense, are exempt completely from the prohibition in the appropriation acts, while others have partial exemptions for various types of positions or organizational units.

The status of the five respondents in the instant case illustrates the type of questions which might be encountered. They all allege that they are Chinese residents of the United States. One entered the United States in 1946, the other four in the

1960's. Of these four, two entered from Hong Kong, one from Macao and the other, presumably, from mainland China. Thus, determination of their present nationality may present a problem and, unless they fall within one of the exceptions from the prohibition against payment of noncitizens, they may be denied the benefits of the Ninth Circuit's decision in spite of any change in the Commission's regulations.

This is not to say that the problems engendered by these added complications are insurmountable, but their resolution will add to the time and money expended, perhaps unnecessarily, to issue and apply new regulations. Moreover, any resolution will be tentative until the Supreme Court disposes, in some manner, of the Government's petition for a writ of certiorari and I am concerned that in the interim the status of the alien applicant for Federal employment will remain clouded and uncertain to the detriment of both the alien and the Government.

/S/ Robert E. Hampton
ROBERT E. HAMPTON,
Chairman,
United States Civil Service Commission.

Subscribed and sworn to before me this 24th day of April, 1974 in the City of Washington, District of Columbia.

VIOLET L. DEE,
Notary Public.

My Commission expires Feb. 28, 1977.

Supreme Court of the United States

No. 73–1596

ROBERT E. HAMPTON, CHAIRMAN OF THE UNITED STATE CIVIL SERVICE COMMISSION, ET AL., PETITIONERS

v.

MOW SUN WONG, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 10, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

U.S. GOVERNMENT PRINTING OFFICE: 1974